

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 06-0184

Sales/Use Tax

For the Period: 2003 and 2004

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ISSUE

I. **Sales/Use Tax—Garment Embroidery**

Authority: IC § 6-8.1-5-1(b); 45 IAC 15-5-3(b); *Hoogenboom-Nofziger v. State Bd. Of Tax Comm'rs*, 715 N.E.2d 1018 (Ind. Tax Ct. 1999); 45 IAC 2.2-8-12; 45 IAC 15-11-2

STATEMENT OF FACTS

The taxpayer sells and manufactures embroidered and screen printed clothing. An audit was conducted by the Department of Revenue. The taxpayer protested the audit. A telephone hearing was conducted on September 20, 2006. This Letter of Findings results from the hearing and the information provided by the taxpayer. More facts will be provided below.

I. **Sales/Use Tax—Garment Embroidery**

DISCUSSION

Before examining the taxpayer's protest, it should be noted that the *taxpayer* bears the burden of proof. IC § 6-8.1-5-1(b) states in pertinent part:

The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

The Indiana Administrative Code also states “[t]he burden of proving that a proposed assessment is incorrect rests with the taxpayer...” 45 IAC 15-5-3(b).

45 IAC 15-5-3(b)(7) notes that the “purpose of the hearing is to *clearly* establish the taxpayer's *specific* objections to the assessment and *reasoning* for these objections.” (*Emphasis added*).

Also of import, although a property tax case, is *Hoogenboom-Nofziger v. State Bd. Of Tax Comm'rs*, 715 N.E.2d 1018, 1024 (Ind. Tax Ct. 1999), a case in which the Indiana Tax Court explained that, "State Board hearing officers do not have the duty to make a taxpayer's case."

The Audit Report states that the taxpayer is "a registered retail merchant engaged in selling and manufacturing embroidered and screen printed garments. In addition, [taxpayer] embroiders items on tangible personal property owned by their customers."

The Audit Report also states:

[T]axpayer failed to obtain an exemption certificate or assess sales tax on several sales of tangible personal property. The taxpayer was provided with a list of exemption certificates requested. ... The taxpayer obtained a Certificate of Incorporation from one of their customers stating that they were a not-for-profit organization however they were not able to obtain an exemption certificate

Regarding exemption certificates, 45 IAC 2.2-8-12 states in part:

(b) Retail merchants are required to collect the sales and use tax on each sale which constitutes a retail transaction unless the merchant can establish that the item will be used by the purchaser for an exempt purpose.

(c) All retail sales of tangible personal property for delivery in the state of Indiana shall be presumed to be subject to sales or use tax until the contrary is established. *The burden of proof is on the buyer and also on the seller unless the seller receives an exemption certificate. (Emphasis added)*

45 IAC 2.2-8-12 also states:

(f) An exemption certificate issued by a purchaser shall not be valid unless it is executed in the prescribed and approved form and unless all information requested on such form is completed.

The Audit Report also notes that a "disk digitizing of [taxpayer's] manufactured items" was taxable as a "unitary transaction." Regarding the taxpayer's "thread to manufacture [] embroidered shirts," the Audit Report states:

[T]hread is used to embroider tangible personal property belonging to their customers. Therefore, a calculation was completed based on the taxpayer's invoices and the calculation resulted in 80 [percent] of thread being used in manufacturing and 20 [percent] of the thread being used in service only transactions.

With that in mind, we turn to the taxpayer's protest. In correspondence to the Department, the taxpayer states:

I do protest because some of the items were farm and animal medication[.] I have been after the bars and companys [*sic*] that I know re-sode [*sic*] the items also [Company X]

designs that is used in direct production of the embroider designs. Also the embroidery thread that is used in the design then charced [sic] sales tax as part of the good [] repairs on machine.

The above quotation is basically the extent of the taxpayer's written protest. After the hearing, the taxpayer faxed to the Department documentation that the taxpayer purports to be relevant. The documentation is not sufficient and does not resolve the issues (there is one exception: a 2003 exemption certificate for a diner, which appears to be valid and germane). For example, the documentation includes such items as exemption certificates dated 2006 (however the years at issue in this protest are 2003 and 2004), an unsigned exemption certificate from a daycare center, a copy of the certificate of incorporation for a not-for-profit club, The taxpayer also faxed a receipt from an athletic goods store for replica jerseys, but it appears from the Audit Report that the taxpayer already received credit for these items.

At hearing, the taxpayer stated that it should not be taxed on thread since sales tax was charged on the garment that contains the thread (taxpayer states that it taxes the finished garment). Taxpayer also stated that an "embroidery book and disc" is exempt (it was not made clear at hearing, nor developed in prior correspondence, exactly how the disc works. It appears the disc contains an embroidery design). The taxpayer did not clearly establish the basis and reasoning of the protest on these items.

In conclusion and to reiterate, the taxpayer bears the burden of proof. The taxpayer must sufficiently develop its argument and reasoning. It is not clear if the taxpayer protested the penalty and interest (*See* 45 IAC 15-11-2 regarding the penalty). At any rate, the taxpayer did not sufficiently develop a penalty argument, and the Department is unable to grant taxpayer's request that the penalty be abated. By statute, interest cannot be waived.

FINDING

Taxpayer's protest is denied on all protested items, except for the items related to the 2003 exemption certificate for the diner. Regarding the 2003 exemption certificate the Audit Division is requested to review the items relating to it.